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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,318	03/18/2004	Donna Sue Davis	2003B101A	5374

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EXAMINER
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PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/803,318

Applicant(s)

DAVIS ET AL.

Examiner

Marc A. Patterson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23-35, 37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-35, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### NEW REJECTIONS

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 36 provides for the use of a film, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 36 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

#### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 23 – 35 and 37 – 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lind et al (U.S. Patent Publication No. 2001/0003624) in view of Agouri et al (U.S. Patent No. 4,126,648).

With regard to Claims 23 – 25, 31 – 33 and 37, Lind et al disclose a multilayer film (paragraph 0013) comprising three layers (at least one layer; paragraph 0013) of a blend of high density polyethylene and low density polyethylene which are made from metallocene catalysts and are therefore metallocene polyethylenes (paragraph 0013); the metallocene polyethylene has a density of  $0.940 \text{ g/cm}^3$  (paragraph 0020); Lind et al therefore disclose a and A/B/A structure, wherein the A layers are comprise a blend comprising a metallocene polyethylene having a density between  $0.915$  to  $0.940 \text{ g/cm}^3$ , and the B is a core layer comprising a blend comprising a high density polyethylene and a low density polyethylene. Lind et al fail to disclose a blend comprising 60 – 90 wt.% low density polyethylene and 40 – 10 wt.% high density polyethylene.

Agouri et al teach a film having 60 – 90 wt.% low density polyethylene and 40 – 10 wt.% high density polyethylene (column 2, lines 16 – 20) for the purpose of obtaining a film having superior properties to a film comprising high density polyethylene alone (column 5, lines 60 – 64). One of ordinary skill in the art would therefore have recognized the advantage of providing for the thickness of Agouri et al in Lind et al, which comprises a film, depending on the desired properties of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a blend comprising 60 – 90 wt.% low density polyethylene and 40 – 10 wt.% high density polyethylene in Lind et al in

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order to obtain a film having superior properties to a film comprising high density polyethylene alone as taught by Agouri et al.

With regard to Claim 26, the metallocene polyethylene disclosed by Lind et al is linear low density polyethylene (paragraph 0013).

With regard to Claims 27, the high density polyethylene disclosed by Lind et al has a density of 0.960 to 0.965 g/cm<sup>3</sup> (paragraph 0020).

With regard to Claims 28 and 38, the low density polyethylene disclosed by Lind et al has a density of 0.925 to 0.935 g/cm<sup>3</sup> (paragraph 0020).

With regard to Claims 29 – 30, the film disclosed by Agouri et al has a thickness of less than 50 microns (column 1, lines 10 – 11), and therefore has a 1% secant modulus MD of at least 500 mPa and 1% secant modulus TD of at least 600 mPa and as Gloss 20 and 60 of 2% or less.

With regard to Claim 34, the film disclosed by Lind et al is coextruded (paragraph 0056) and heat – shrinkable (paragraph 0064).

With regard to Claim 35, Lind et al disclose a group of items wrapped by the film (pieces of meat; paragraph 0004); Lind et al therefore disclose a collation shrink wrapped structure.

#### ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's arguments regarding the rejections of the previous Action have been carefully considered but have not been found to be persuasive for the reasons stated below.

Applicant argues, on page 4 of the remarks dated July 20, 2006, that the rejections are improper because Lind discloses at least three layers, in which at least one layer is a barrier layer, described at paragraph 0026.

However, Lind is not limited to a film comprising a barrier layer; Lind also discloses a film comprising one layer comprising a single layer comprising an ethylene polymer (paragraph 0013) or a multilayer film comprising ethylene polymers made with a metallocene catalyst (paragraph 0013) for providing increased strength and faster bag making speeds (paragraph 0013). Alternatively, the film may also comprise a barrier layer (paragraph 0014).

Applicant also argues, on page 5, that neither HDPE or LDPE is a barrier layer.

However, as stated above, Lind is not limited to a film comprising a barrier layer.

Applicant also argues on page 5 that Agouri et al do not teach a metallocene catalyst; the rejection is therefore based, Applicant argues, on impermissible hindsight.

However, as stated above it would be obvious, in view of Agouri et al to provide for a film having 60 – 90 wt.% low density polyethylene and 40 – 10 wt.% high density polyethylene. The rejection is therefore not based on impermissible hindsight.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Marc Patterson 10/2/06*  
Marc A. Patterson, PhD.  
Primary Examiner  
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